

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.2043 of 2016 (O&M)
Date of decision:05.04.2018**

Sakoor

.....Appellant

Versus

Rehman and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Gupta, Advocate,
for the appellants

Ritu Bahri, J.

CM No.5384-C of 2016

For the reasons mentioned in the application, same is allowed and delay of 429 days in filing of the appeal is condoned.

FAO No.2043 of 2016 (O&M)

This appeal has been filed against the judgment dated 04.07.2014 passed by the Additional District Judge, Mewat, dismissing an appeal filed by defendant-appellant against the judgment and decree dated 31.01.2013 passed by the Civil Judge (Junior Division), Ferozepur Jhirka, whereby suit filed by plaintiff-respondent No.1, has been decreed.

Rehman-plaintiff (respondent No.1 herein) filed a suit for permanent injunction claiming that he along with other co-sharers is in actual physical cultivating possession of the suit land bearing Rect. No.26, Killa No.6/1 (3-14), situated within the revenue estate of village Baikhera, Tehsil Ferozepur Jhirka, District Mewat. Neither the plaintiff has ever

surrendered his possession over the suit land to any person nor any

ejectment order has been passed by any competent Court of law. However, the defendants were trying to dispossess the plaintiff from the suit land and raise construction thereon. They had started collecting building material to fulfill their motive. Plaintiff had requested the defendants not to interfere in his possession over the suit land, but to no avail. Hence, the suit.

Upon notice, defendant (appellant and proforma respondent Nos.2 & 3) filed written statement taking preliminary objections with regard to the maintainability of the suit, locus standi, cause of action, estoppel and concealment of material facts. On merits, it was stated that they were in possession over the suit land and plaintiff-respondent No.1 had no concern with the same. In the year 1995, they had constructed their *pacca* houses in the suit property with the consent of plaintiff and since then, they were residing in the same along with their families. Possession of the plaintiff over the suit property was denied. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Whether plaintiff has concealed true and material facts from the Court? OPD
6. Relief.

Trial Court, after hearing learned counsel for the parties, returned

a finding on issue No.1 in favour of plaintiff-respondent No.1 and against

the defendant-appellant. Israil, Special Power of attorney of plaintiff, appeared as PW-1 and deposed that plaintiff-Rehman was 80 years old and was unable to move. There was a poultry farm of the plaintiff in the year 1982, which was flooded in the year 1996. Possession of the plaintiff over the suit land in the year 1996 was admitted by the defendants. Plaintiff had placed on record jamabandis for the year 2005-06 Ex.PW1/C and for the year 1995-96 Ex.PW1/D, for the year 1991-92 Ex.PW1/E and for the year 1965-66 Ex.PW1/F. A perusal of the same shows that in column No.5 (possession), entry of *Arazi Matruka gair allotshuda bhondedar* was present. As per this entry, predecessor-in-interest of the plaintiff and thereafter, the plaintiff along with his brother Yasin Khan son of Bhura to the extent of 3/8th share each were recorded as *gair maurusi*. Trial Court further observed that during the pendency of the suit, defendants had forcibly and illegally dispossessed the plaintiff and raised their temporary construction over the suit land in a very hurried manner. In order to ascertain the existing position, Local Commissioner was appointed by the trial Court, who submitted his report Ex.P-C, site plan Ex.PD, memo of presence Ex.P-D/A and photographs of the suit land as Ex.P-E. All those documents established that construction had already been raised by the defendants over the suit land in a hurried manner. Pursuant to the said construction, plaintiff had made a complaint (Mark A and B) to the SHO and SDM, Ferozepur Jhirka. In this regard, FIR No.152/2012 dated 28.07.2012, under Sections 148/149/379/447/50 of IPC and 25 of Arms Act Ex.PW2/B was registered against the defendants and their family members. Police help was also provided to ensure compliance of ad-interim injunction order dated 23.11.2010. Keeping in view the revenue record in the form of

Jamabandis Ex.PW1/C, Ex.PW1/D, Ex.PW1/E, Ex.PW1/F and report given by the Local Commissioner Ex.PC, suit filed by plaintiff-respondent No.1 was decreed and he (plaintiff) was held to be in possession of the suit land as co-sharer. The lower appellate Court dismissed the appeal and held that in view of the revenue record and the report of the Local Commissioner, if the plaintiff did not appear in the witness box due to his old age, adverse inference cannot be drawn against him. Moreover, Special Power of Attorney of plaintiff has appeared in the witness box as PW-1 and proved on record the revenue record, which reflected the possession of plaintiff over the suit property.

After going through the impugned judgments and documents relied upon by the parties, no illegality, much less perversity, has been found therein, warranting interference by this Court. The suit has been rightly decreed by the Courts below. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

05.04.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No